

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MANUEL RIVERA)	
Claimant)	
VS.)	
)	Docket No. 223,223
CIMARRON DAIRY)	
Respondent)	
AND)	
)	
UNINSURED)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on May 4, 1998.

ISSUES

It is undisputed that respondent was engaged in an "agricultural pursuit," as that phrase is used in K.S.A. 44-505(a)(1). The issue on appeal is whether respondent had, by purchase of insurance or otherwise, elected to come under the provisions of the Kansas Workers Compensation Act (Act).

The Special Administrative Law Judge entered an Order requiring respondent to pay preliminary hearing benefits. For the reasons stated below, the Appeals Board concludes that the Order should be reversed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board has jurisdiction to consider this issue because it goes to the fundamental question whether the Act applies and, therefore, whether the Special Administrative Law Judge has jurisdiction to enter an order for workers compensation benefits to be paid by respondent.

The evidence establishes that during an initial construction phase of the dairy facility, respondent purchased workers compensation insurance coverage. Respondent acknowledges that it intended to come within the Act during that period of time. It appears that no election was filed. Once the initial construction phase was completed, respondent determined it was no longer necessary to purchase workers compensation coverage and in May of 1996 terminated the policy. For approximately three months after the policy was canceled, the respondent posted signs in both Spanish and English informing employees of the change. Claimant was injured on March 19, 1997, after the respondent had terminated its workers compensation insurance coverage.

The Special Administrative Law Judge ordered benefits to be paid, citing a prior Appeals Board decision in Schneider v. Hensleigh, Docket No. 170,986 (February 1994). Respondent argues that the present facts differ materially from those of Schneider and the Appeals Board agrees. In that case, respondent advised its employees they would be covered by workers compensation insurance and, in fact, purchased such insurance. The respondent did not, however, file the necessary election. In Schneider, the claimant was injured during the period of insurance coverage and the Board found that the purchase of insurance, even in the absence of a filed election, brought the respondent under the provisions of the Act.

In this case, there was no insurance coverage at the time of the accident, no election filed, and, even though claimant was possibly aware that there had been coverage at one time, there was no representation to the employees that they would be covered. Based upon these material differences, the Appeals Board concludes the respondent is not covered by the Act.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Special Administrative Law Judge William F. Morrissey on May 4, 1998, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
D. Shane Bangerter, Dodge City, KS
Wendel W. Wurst, Garden City, KS
William F. Morrissey, Special Administrative Law Judge
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director